No. 15,767

IN THE

United States Court of Appeals

For the Ninth Circuit

ET MIN NG,
Appellant,

vs.

HERBERT BROWNELL, JR., Attorney General of the United States,
Appellee.

On Appeal from the United States District Court for the District of Hawaii in Civil No. 1460.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF PLEADINGS AND FACTS DISCLOSING JURISDICTION.

An Amended Complaint was filed by Appellant on February 20, 1956 (R. 2-5) and an Answer was filed on February 28, 1956 (R. 6-7). The jurisdiction of the District Court was based on 28 U.S.C. §2201, and §360(a), Immigration and Nationality Act. (8 U.S.C. §1503(a)). Judgment was entered on June 28, 1957 (R. 18) and a Notice of Appeal filed on July 23, 1957 (R. 19). Jurisdiction in this Court is predicated upon 28 U.S.C. §§1291 and 1294(1).

STATEMENT OF FACTS.

Since Appellant for the most part ignores the record with reckless abandon, Appellee will present his own statement of facts.

Appellant claims to be born in Toyshan City, China, on May 5, 1933 (R. 40-41, 97). He also claims he is the son of Hung Way Ng (R. 97, 98), and Hung Way Ng claims Appellant is his son (R. 40, 41). Hung Way Ng claims to be a citizen of the U. S. (R. 37) by acquisition through his father, Ng Yam Yat (R. 38), who he claimed was a U. S. citizen (R. 38, 39).

Appellant was admitted to the United States as a United States citizen by a Board of Special Inquiry on May 15, 1952 (R. 14).

In May 1953 Appellant applied for a Certificate of Citizenship at the Honolulu Immigration Office (R. 14).

The Appellee, through the Immigration and Naturalization Service, denied his application on the ground that he was not a National of the United States (R. 14).

In view of the wide disparity between the Court's findings (R. 13-16) and Appellant's statement of fact (Br. 1-4, 9) concerning the blood tests and blood test results, Appellee's statement concerning these will follow the Court's findings.

"During the course of Plaintiff's application for a Certificate of Citizenship, he and his alleged father were requested to take a blood test. *This, Plaintiff*

and his alleged father voluntarily agreed to do, as evidenced by documents signed by them, and which were explained to them through a Chinese interpreter at the Immigration and Naturalization Service" (emphasis supplied) (Court's finding V) (R. 14). See also (R. 108-11, 116-117, 163-164; Defendant's Ex. Nos. 1 and 2).

"Plaintiff and his alleged father went to the office of the Blood Bank of Hawaii, Honolulu, T.H., where blood was drawn from the arms of each of them." (R. 15, 131—compare R. 160-163).

"The blood so extracted was tested under extremely carefully controlled conditions by two qualified technicians and were compiled and sent to the doctor who himself was a highly qualified expert Serologist. The doctor correlated the results of the blood tests as compiled by technicians" (R. 15). (This finding is amply supported by the evidence, see testimony of Ann Stegmaier (R. 200-268), Katherine Young (R. 270-319), and Leon E. Mermod (R. 320-347).

"The mechanics of the blood tests were done with such care that any possibility of error was reduced to a minimum, and the alleged discrepancy raised concerning the worksheet only goes to prove that the control methods used by the Blood Bank of Hawaii are excellent, and the results of the blood tests should be given great weight." (R. 15). This finding is supported by the testimony of Stegmaier, Young, and Mermod noted above.

"The results showed that as relates to the MN blood typing, the alleged father had type N blood

and the alleged son and Plaintiff herein had type M blood." (R. 15; Defendant's Ex. Nos. 5 and 7).

"The results of the blood tests show conclusively that Ng Hung Way, the alleged father of the Plaintiff, cannot possibly be the father of the Plaintiff." (R. 15, 333-335).

STATUTES INVOLVED.

Section 360(a), Immigration & Nationality Act, 8 USC §1503(a).

> "If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28, against the head of such department or independent agency for a judgment declaring him to be a national of the United States. . . ."

QUESTIONS PRESENTED ON APPEAL.

The only question raised is whether the Appellee has met his burden of going forward with the evidence. The myriad of questions presented and specifications of error of Appellant all relate to the one issue.

SUMMARY OF ARGUMENT.

The findings of fact of the Court are supported by overwhelming evidence. There is nothing in the record which would bring the case within the clearly erroneous rule. The Trial Court's finding should not be disturbed.

I.

The Appellant alleges that there were no rules or regulations regarding the requiring of a blood test at the time Appellant was examined concerning a Certificate of Citizenship, and the Court committed "crucial error" in holding that rules and regulations existed. To bolster this statement he cites *his* proposed findings of fact on page 8, *which the Court did not accept,* together with his examination of Appellant, at page 146 of the Record and at page 148 of the Record. He also cites the oral opinion of the Court at page 326 of the Transcript (page 355 of the Record), and page 329 of the Transcript (page 358 of the Record). He at no time specifically cites the actual Findings of Fact and Conclusions of Law of the Court as filed. It will be noted that the position of the Appellee has been, from the beginning, that it has made no difference at all whether blood tests were required or not required in an application for a Certificate of Citizenship (R. 153), because blood test results are just another form of evidence and if Appellant voluntarily submitted to the taking of the blood tests, then whether they were required or not has no bearing whatsoever on the evidentiary effect of the blood tests. However, this question was thoroughly explored

in *U. S. v. Shaughnessy,* 2 Cir. 1956, 237 F. (2d) 307, at page 309 (Rev'd on other grounds, sub nom *U. S. v. Murff,* No. 32, U. S. Supreme Court, October Term 1957, decided December 9, 1957). The Court states: "The first formal authority for the use of blood tests was contained in a precedent decision of the Board of Immigration Appeals handed down on February 25, 1953. The Immigration Service first promulgated instructions relating to blood tests in early 1953. The early instructions dealt only with visa petitions and certificates of citizenship: . . .

"More recently, some time in 1954, all of those instructions were rescinded and all current instructions concerning the investigation techniques with respect to cases wherein blood tests are deemed essential or necessary do not directly or indirectly refer to any racial or nationality group by predicating the requirement on the nature of the case and the issue of paternity or the relationship which is involved. . . ." So, apparently at the time that Appellant was examined for his Certificate of Citizenship, an instruction was in existence concerning the use of blood tests in applications for Certificates of Citizenship. However, whether this is true or not, as has been stated before, it makes little or no difference since the Court has specifically found (R. 14) that Appellant and his alleged father voluntarily agreed to submit to blood tests.

II.

The Court has specifically found that Appellant and his alleged father *voluntarily* submitted to blood

tests. There is ample evidence to support this finding. Appellant's argument in his second point flies in the face of the Court's finding, for there is no statement which says the Court's finding is not supported by ample evidence. The only thing which can be said on behalf of the Appellant is that there was a conflict of evidence on this point and the trier of facts found the blood tests were voluntarily submitted to. The Appellant states: "There has been no evidence to show that Plaintiff-Appellant's father's blood test was obtained voluntarily and not by duress, or coercion and fraud." He then states that "there was proper objection to the admission of Plaintiff-Appellant's father's blood test results." As to the technical defense, first there is no specification of error alleging error in the ruling of the Court setting forth the testimony on the admission of the document complained of. However, the document was signed by Appellant's father and the document speaks for itself. It might be well to note that when the Appellee attempted to get the information from the father concerning the signing of Appellee's Exhibit I, the father refused to answer any questions concerning this document, based upon his privilege against self-incrimination. Mr. Ching testified that he explained the document to Appellant's father and that both Appellant and his father signed it (R. 137). As to the remainder of Appellant's argument concerning the "demand" to take blood tests by the Immigration Service, and that being a violation of due process of law, again the Court has made specific findings concerning the taking of a blood test, and the findings are

supported by substantial evidence (R. 14). Further, Appellant quotes repeatedly from the testimony of Appellant and his alleged father concerning this particular finding. Obviously the Court disregarded this testimony and believed Mr. Ching and the documents themselves concerning the voluntariness of the taking of the blood tests. It is well within the realm of the Trial Court, and in fact his sole responsibility, to pass on the credibility of the witnesses.

Mar Gong v. Brownell, 209 F. (2d) 448;
Chow Sing v. Brownell, 217 F. (2d) 140;
Law Don Shew v. Dulles, 217 F. (2d) 146;
Wong Ken Foon v. Brownell, 218 F. (2d) 444;
Lew Wah Fook v. Brownell, 218 F. (2d) 924;
Nishikawa v. Dulles, 235 F. (2d) 135; and
Iwamoto v. Dulles, Slip Opinion No. 15,441, 9 Cir., decided December 10, 1957.

As to the irresponsible charges contained on page 16 of Appellant's Brief: "This was not government by law but by star chamber like tactics which is wholly and clearly abominable. It is clearly a violation of plaintiff-appellant's, or any appellant's constitutional rights to be governed by due process." Appellee has only this to say. The blood test results are merely evidence to be presented in the administrative proceeding. Appellant apparently is of the opinion that because this particular evidence is not in his favor, he must smear the government at every turn. There is no basis for the statements made, either in law or in fact and such intemperate statements such as appear on page 16 of the Brief concerning the Star Chamber should be disregarded.

III.

Appellant alleges that the proposition to be decided in III is whether or not such a rule as he has stated does not exist and violates the due process clause of the Fifth Amendment of the United States Constitution on the ground that it violates "the applicant's right of interference with his physical body or right of privacy or personality," and secondly, that the Immigration Service cannot demand a blood test without violating due process protection of a citizen, although it is not quite clear how this is applied. Also, it is not quite clear that Appellant and his father are citizens. However, be that as it may, as to the first alternative, the short answer to this proposition is that the blood tests were voluntarily submitted to by both the Appellant and his father, as shown by Defendant's Exhibits 1 and 2 in evidence. Secondly, the Appellant was not compelled to take an examination, i.e., a blood test, but it was entered into voluntarily. The Appellee would like to pause at this time and suggest to the Court that there is something very strange about the argument of the Appellant concerning the taking of his blood test for the following reasons: First, the blood tests, if submitted to, would be the only objective evidence concerning relationship in the whole case, other than the testimony of the father and the son; and secondly, it is only the father and the son who can produce this evidence, and it is wholly within their power to grant or withhold the evidence and it is stated that before a discovery that their blood was incompatible, i.e., during the application for a certificate

of citizenship, they voluntarily submitted to taking a blood test. Since that time they have violently objected to anything that relates to the blood test results and it may be inferred by the conduct of the Appellant and his alleged father herein that they would never submit to another blood test to ascertain paternity. In relation to this question presented, Appellant cites the case of *Skinner v. Oklahoma,* 316 U.S. 535 (1942). He fails to cite the latest case from the Supreme Court of the United States, *Breithaupt v. Abram,* 352 U.S. 432, which holds that a blood test taken from an unconscious person is admissible in a criminal proceeding as long as it was extracted by a doctor. The short answer, nevertheless, to the Appellant's contention here again is that the Court found there was ample evidence to support the finding that the Appellant and his father *voluntarily* submitted to the blood tests. As to the second alternative objection contained in Appellant's Brief raised under the heading Paragraph III, Appellee sees absolutely no application of this argument to the case at bar. In the first place the blood tests were not "demanded" and in the second place Appellant and his father were not compelled by Court order or administrative order to take the blood tests. Consequently, the cases cited, which state that the parties to an action may be required to undergo a physical examination which can include blood testing, have absolutely no application to the case here. Nor is it contended by the Appellee that they do. Again, the only problem presented is that voluntarily taken blood tests were used as evidence in an administrative pro-

ceeding, namely, in a proceeding where Appellant applied for a certificate of citizenship. It is to be noted that they were used as evidence and certainly there is no bar to the Immigration Service using whatever competent evidence it may lay their hands on to decide a difficult problem.

Nor are we concerned with the discussion by the Appellant of the difference (whether there really be any or not) of the treatment of an alien and a citizen as to constitutional rights, because no one's constitutional rights have been violated in any way. Appellant and his father voluntarily submitted to blood tests and Appellant submitted to them because he wanted to get a certificate of citizenship.

It is to be noted that he had already been admitted to the United States as a U. S. citizen and has had issued to him by the U. S. Government a U. S. Passport. But the crux of the situation here is that Appellant wanted his certificate of citizenship and because he wanted it he submitted to the blood tests and he voluntarily submitted to the blood tests. Unfortunately for him, the blood tests were not compatible. I am sure it is most obvious that Appellant would not be in Court today if the blood tests had turned out to be compatible and he had been issued his certificate of citizenship. Nor can the Appellee see any logic or reason in the argument made that a request to take Appellant's father's blood test is a separate violation of Appellant's constitutional rights. It is very, very basic law that one person cannot claim constitutional rights of another.

IV.

Appellant makes the following statement in his Brief, beginning on page 20, in proposing the question to this Court: "Whether or not the 'waiver of right' of plaintiff-appellant and his father is based upon the existence of a rule and regulation requiring a blood test is invalidated or viodable because of duress, coercion and fraud by the fact that no such rule and regulation existed." As has been continually argued in this brief, it makes no difference whatsoever whether a rule or regulation existed, and furthermore, it never has been the contention of the Appellee herein that a rule or regulation was necessary under any circumstances. Particularly so when the taking of the blood test was voluntary. As has been stated repeatedly, the Trial Court so found that Appellant and his father voluntarily took blood tests. Secondly, as can be gleaned from the discussion in *U. S. v. Shaughnessy,* 237 F. (2d) 307, 309, the examining officer had plenty of authority to request that Appellant take a blood test. Nor does it have anything to do with the issues herein since the blood test was voluntarily submitted to and since the Court and administrative proceedings have overwhelmingly held that blood tests, when properly conducted, are competent evidence of nonpaternity. The Court will find by examining Appellee's Exhibits 1 and 2 that the documents quoted as a "waiver of right" by Appellant is nothing more than a statement in writing by the Appellant and his father that they would be willing to take blood tests, and also, a statement that the effect

of blood test results had been explained to them. (R. 30). Appellant speaks about threats being made to him which negated his free will and that of his citizen father. There is no evidence whatsoever of these threats, and more particularly, the Court made no finding for the Court could not have made the finding that the blood tests were made voluntarily unless there had been no threats Appellant has continually throughout this portion of his argument attempted to pull himself up by his bootstraps on testimony which obviously the Court had to disregard in order to find that the blood tests were taken voluntarily. And as has been quoted supra, it is the exclusive province of the Trial Court to decide the credibility of witnesses and the weight of the evidence. (Note authorities cited above).

And in conclusion as to this argument number IV, it should again be pointed out that this case should be viewed in its proper perspective for here the Appellant was applying for something from the United States Government. He had as his burden of proof to prove that he was a citizen of the United States. In order to satisfy the Immigration Examiner he was asked to take a blood test. This he voluntarily did. No matter what Appellant says, the Trial Court has found this to be a fact and he has ample evidence in which to support his finding. It seems strange now that someone who is asking for something from the Government in turn states, I want this document but you shouldn't have asked me to produce the only objective evidence available. And it is evidence which

is completely within the control of the Appellant and his father to produce. They have produced it voluntarily. It certainly is not the fault of the Government nor the Blood Bank of Hawaii that the tests were incompatible. That is nothing more than an incontestible medical fact. And again in this connection the testimony of Appellant's father as an adverse witness is drawn to the attention of the Court, where he refused to answer any questions concerning the blood testing or the blood test results. At the very least, Appellant's father is making it quite difficult for the Appellee to get at the actual facts of the case.

V.

Under V Appellant states that there is no explanation as to the significance and effect of Appellant's statement that he was willing to take a blood test. (Defendant's Exhibits Nos. 1 and 2). He further states that the evidence upon appeal clearly shows that no adequate explanation of the meaning and significance of the "alleged waiver of rights" was given this Plaintiff-Appellant and that therefore, he cannot be held to his agreement to take the blood tests. It is only necessary to refer to the testimony of Mr. Ching (R. 135-137). It is obvious that Mr. Ching, the official interpreter, explained to the Appellant and his father the contents of Appellant's Exhibits 1 and 2. It is submitted that those exhibits contained a very clear expostulation of the evidentiary effect of the blood tests. Consequently, the statement that there was no adequate explanation is without either merit

or foundation. Further, it may be noted that in the testimony of Appellant himself he states the contents of Exhibit 2 were explained to him by Mr. Ching (R. 163-164). The argument by Appellant states there is no evidence that these documents were explained by the interpreter. As noted above, apparently Appellant has overlooked his own testimony in which he admits the interpreter explained to him the contents of Exhibit 2. Also, he neglects to point out that Mr. Ching, in answer to the question as to where his explanation took place, stated:

> "Q. Now, Mr. Ching, will you go back to what you were stating as to where your explanation took place?
>
> A. Well, this started—this was started in Mr. Greenwald's office and it ended up in the front office where formerly they had two desks at the front office, and it is right there that the signatures were signed, his signature and my signature."

That testimony, coupled with the testimony of the Appellant himself, clearly shows that the documents were explained to the Appellant, and that Appellant's self-serving testimony was quite apparently not believed by the Trial Court.

VI.

Apparently, although it is not very clear, Appellant is contending that the Government may not use the evidence which it secured from the blood tests in the Section 360 action because it is limited only to the action of the denial of the certificate of citizen-

ship. It is contended by the Government that this argument, if it is not frivolous, borders thereupon, for in the Section 360 action the Appellant is complaining that he had a right or privilege as a U. S. citizen denied to him in the certificate of citizenship proceeding, and he is now saying that although it was denied in that proceeding the evidence adduced therein cannot be used in the Section 360 action. However, he states that this is a contractual agreement and it cannot be used in any other proceeding.

There is no limitation contained in the agreement as such. Appellant apparently finds comfort in the following statement taken from the agreement (R. 301): "I, Et Min Ng, holder of blank and presently residing at 1450 Alencastre Street agree to submit to a blood test to determine my blood type and RH factor in connection with application for Certificate of Citizenship." The Appellee contends that this is no limitation at all as to whether the evidence can be used. It merely states that the Appellant agreed to submit to a blood test to determine his blood type in relation to an application for a certificate of citizenship. However, the evidence adduced from the blood tests themselves may be used in any way the Appellant or Appellee see fit. In addition, this complaint was filed on the basis that Plaintiff had been denied a right or privilege as a national of the United States, on the ground he was not a national of the United States, in an application for a certificate of citizenship, to wit, the very one for which the evidence of the blood test was originally taken.

VII.

Appellant attacks the reliability of the blood test results on the basis that it does not measure up to the judicial standard, relying on *U. S. v. Shaughnessy,* 115 F. Supp. 302, at 306-308, and Disputed Paternity Proceedings, 3rd Ed., 1953, by Sidney Schatkin. The situation described by Mr. Schatkin is entirely different from the situation found herein. In the first place, the Court, in paternity proceedings in almost every jurisdiction, has the power to require submission to blood tests. Consequently, the blood tests may be set up on the line Mr. Schatkin suggested. However, here in Hawaii, in the middle of the Pacific, the blood testing was turned over to an independent agency, the Blood Bank of Hawaii. It has no relationship to the United States Government, or to the Appellant, and only from a careful reading of the testimony of the employees of the Blood Bank of Hawaii and of Dr. Mermod himself, can it be ascertained the care or conversely the lack thereof used in blood testing. It may be inferred from the testimony and conduct of the Appellant and his claimed father concerning the blood testing that they would never resubmit to blood tests voluntarily. That apparently is the reason for the concentrated attack on the blood testing made herein. It will be noted from the Record at pages 225-228 that a third person also checked the results. Out of an abundance of caution the Trial Court struck all of the testimony concerning the third person's testing, not on the ground it was not done, but that it might possibly be based on

hearsay evidence. Both Katherine Young and Miss Stegmaier, the technicians who performed the manual portions of the blood tests, are expert technicians at doing this type of laboratory work. Both had done innumerable tests of this type and as their testimony amply shows, they were well aware of the importance of being extremely careful in this type of laboratory work. The Appellant makes a great deal of the changed letters in the MN blood group of Katherine Young's writing. Katherine Young's testimony was taken by deposition and her testimony concerning the worksheet was made from a photostatic copy of the original thereof. However, Appellant was not represented at this deposition, although due notice was served. (R. 270). The alteration on the letters was not called to anyone's attention until Appellant's argument before the Court. At that time it was called to the attention of the Court and to the attorneys for the defense. However, be that as it may, the Court found that this alleged discrepancy only went to show the carefulness of the checking of the blood tests by the Blood Bank of Hawaii, a finding which is amply supported by the evidence and the final outcome of the tests could easily have been conformed by calling the third technician, Mrs. Maeda, as a witness, if it were known prior to the closing of the evidence that this strike over had been made. However, be that as it may, because of the whole setup of the method of the Blood Bank of Hawaii, it is not only abundantly clear but it is so clear as to be beyond doubt that, as the Court has characterized it, these tests were

conducted under "extremely careful, controlled conditions by two qualified technicians" and that the results so tabulated were compiled and sent to the doctor who correlated the results. Apparently, Appellant, after drinking deeply of the thoughts of Sidney Schatkin, feels that his solution is the only solution to blood testing; that this method used by the Blood Bank of Hawaii is not equally satisfactory. This, of course, the Appellee does not agree with, nor does the Court, since the whole method gives one confidence in the fact that if any mistake were made by any technician that through the method of retesting the mistake would be caught and if the change of the N to a M on the worksheet was not just a human typographical error but actually an error in the testing and it was changed, under either circumstance, the method shows that the Blood Bank of Hawaii's system is extremely good, and certainly measures up to the standard of carefulness required by the Courts, particularly so when it is quite obvious that never again will the Appellant be "hoodwinked" into taking a blood test. As to Appellant's allegation concerning the expertness of Dr. Mermod, all that the Appellee can state is to refer this Court to the record herein to Dr. Mermod's testimony and that his testimony leaves no doubt that he is qualified to testify concerning these tests.

VIII.

Appellant in his final point made in his brief states that the question presented is whether the blood test and its results, if admissible at all is not alone con-

clusive evidence of non-paternity so as to conclusively rebut Appellant's prima facie case. In this connection, again, the whole thread of Appellant's argument has to be examined since it attempts without any degree of success to pick to pieces the carefulness of the blood test carried on by the Blood Bank of Hawaii. It also ignores completely the Court's findings supported by ample evidence that the blood test was carried on in an extremely careful manner. The case cited to this Court *Chin Wing Gwong v. Dulles,* 139 F.S. 116, at page 120, deals with the fact that blood tests were made by Dr. Veo at Hong Kong and that there was no opportunity afforded to the parties therein to examine Dr. Veo. Obviously this case is distinguishable on its facts since everyone connected with the blood tests was subjected to long searching examination by counsel for Appellant. Further, the stubborn reliance upon his prima facie case does not move the Appellee. A prima facie case is a minimum amount of proof.

Louie Hoy Gay v. Dulles, 9 Cir. 1957, Slip Opinion No. 15390 decided September 12, 1957; and

Mah Toi v. Brownell, 9 Cir. 1955, 219 F. (2d) 642, 644, cert. den. 1955, 350 U.S. 823.

Further, the blood test results, if the finder of facts, i.e., the Trial Court, are to be believed, were quite persuasive evidence; and certainly if they are to be considered at all they must meet the judicial standard of reliability, and if they do reach that standard there is no question but that they will overcome the minimum amount of evidence produced by the Appellant

to establish his prima facie case. With the results of the blood test balanced against Appellant's and his claimed father's self-serving testimony, it is not hard to understand why the Trial Court could find that the evidence did not prevail in favor of the Appellant.

SEPARATE ANSWERING ARGUMENT.

Appellant's arguments have been answered in the order presented and one further point should be made, although it has been reiterated throughout this brief. The Trial Court found from the testimony adduced two specific points to which Appellant most strenuously objected. One is that the Appellant voluntarily submitted to a blood test, and two, that the blood tests themselves were very carefully carried out and that there was no error. Possibility of an error was reduced to the minimum. It would seem to Appellee that the findings will have to be clearly erroneous before they could be overturned on appeal, and certainly Appellee contends that they were not clearly erroneous, and that in fact it was supported by ample substantial evidence as has been argued throughout the brief.

Rule 52(a), Federal Rules of Civil Procedure;
Mar Gong v. Brownell, 209 F. (2d) 448;
Chow Sing v. Brownell, 217 F. (2d) 140;
Law Don Shew v. Dulles, 217 F. (2d) 146;
Wong Ken Foon v. Brownell, 218 F. (2d) 444;
Lew Wah Fook v. Brownell, 218 F. (2d) 924;

Nishikawa v. Dulles, 235 F. (2d) 135; and
Iwamoto v. Dulles, Slip Opinion No. 15,441,
9 Cir., decided December 10, 1957.

CONCLUSION.

Appellee contends that it is quite clear that the Court's findings were supported by ample substantial evidence; that with this in mind, the Court's findings certainly were not clearly erroneous; and in fact they were absolutely correct. It is submitted that no error whatsoever was committed by the Trial Court.

Dated, Honolulu, T.H.,
January 7, 1958.

Respectfully submitted,

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